

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MB Docket No. 03-244
Table of Allotments,)	RM-10825
FM Broadcast Stations.)	
(Tullahoma, Tennessee, and)	
New Market, Alabama))	

NOTICE OF PROPOSED RULE MAKING

Adopted: December 3, 2003

Released: December 8, 2003

Comment Date: January 30, 2004

Reply Date: February 17, 2004

By the Assistant Chief, Audio Division:

1. The Audio Division has before it for consideration a Petition for Rule Making filed by Tennessee Valley Radio, Inc. ("Petitioner"), licensee of Station WUSX(FM), Channel 227C1, Tullahoma, Tennessee, pursuant to Sections 1.401 and 1.420(i) of the Commission's Rules. Petitioner requests the substitution of Channel 227C2 for Channel 227C1 at Tullahoma, Tennessee, the reallocation of Channel 227C2 to New Market, Alabama, and the modification of the license of Station WUSX(FM) accordingly. Petitioner states that it will apply for Channel 227C2 when allotted to New Market, and further states that, it will construct the facilities if the application is granted.

2. Petitioner states that it desires to change the community of license for Station WUSX(FM) from Tullahoma to New Market under the guidelines set forth in *Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*.¹ Petitioner states that the proposed use of Channel 227C2 at New Market is mutually exclusive with the current use of Channel 227C1 at Tullahoma. Petitioner further states that Tullahoma will not be deprived of its only local service because it is currently served by stations WAUT(FM) (Channel 203A), WTML(FM) (Channel 218A), and WJIG(AM) (740 kHz). Finally, petitioner states that the provision of a first local service to New Market satisfies Priority 3 of the Commission's allotment priorities,² thus

¹ 4 FCC Rcd 3870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990). The Commission stated that a station may change its community of license without subjecting the license to other expressions of interest if (1) the proposed allotment is mutually exclusive with the current allotment; (2) the current community of license will not be deprived of its only local service; and (3) the proposed arrangement of allotments is preferred under the Commission's allotment priorities.

² In determining whether to approve a change of community, we compare the existing versus the proposed arrangement of allotments using the FM allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982), *recon. denied*, 56 RR 2d 448 (1983). The FM allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest

resulting in a preferential arrangement of allotments when compared to the retention of a fourth local service at Tullahoma.

3. The loss area, consisting of 7,862 square kilometers, contains 221,476 persons. There is no gain area because the total coverage area for the proposed allotment at New Market is already served by Station WUSX(FM), Channel 227C1, at Tullahoma. Petitioner states that this loss of service is outweighed by the public interest benefit of a first local service at New Market. Moreover, the loss area will continue to be well-served by more than five aural transmission services.

4. This proposal warrants consideration because the proposed allotment would provide New Market with a first local aural broadcast transmission service. In support of the proposal, Petitioner states that New Market is a Census-Designated Place with a population of 1,864 persons, according to the 2000 U.S. Census. New Market has its own post office, ZIP code (35761), volunteer fire department (supported financially by the community of New Market), elementary and high school, and health clinic. New Market has approximately fifteen churches and a variety of local businesses, many of which identify themselves by using "New Market" in their names. There are also several Madison County governmental offices located in New Market.

5. New Market is not located within an urbanized area, although the 70 dBu contour of proposed Channel 227C2 at New Market will cover 82.4 percent of the Huntsville, Alabama Urbanized Area. For that reason, and because petitioner is claiming an allotment preference for New Market as a first local service, we shall require petitioner to submit a *Tuck* analysis for the proposed new allotment community.³

6. The proposed allotment could be made with a site restriction of 5.2 km (3.2 miles) south of New Market.⁴ Accordingly, we seek comment on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to New Market, Alabama, and Tullahoma, Tennessee:

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
New Market, Alabama	---	227C2
Tullahoma, Tennessee	203A, 218A, 227C1	203A, 218A

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required in paragraph 2 of the Appendix before a channel will be allotted.

matters. Co-equal weight is given to priorities (2) and (3).

³ *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988) ("*Tuck*"). See also *Huntington Broadcasting Co. v. FCC*, 192 F.2d 33 (D.C.Cir. 1951).

⁴ The proposed reference coordinates for Channel 227C2 at New Market are: 34-51-48 NL and 86-25-40 WL.

8. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before January 30, 2004, and reply comments on or before February 17, 2004, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, S.W., TW-A325, Washington, D.C. 20554. Additionally, a copy of any filing should be served on counsel for the Petitioner, as follows:

Mark N. Lipp, Esq.
J. Thomas Nolan, Esq.
Vinson & Elkins L.L.P.
1455 Pennsylvania Avenue, N.W., Suite 600
Washington, D.C. 20004-1008
(Counsel for Petitioner)

9. Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. All envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail or Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, S.W., Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

10. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to a rule making proceeding to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Section 603 and 604 of the Regulatory Flexibility Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 Fed.Reg. 11549 (February 9, 1981).

11. For further information concerning this proceeding, contact Deborah A. Dupont, Media Bureau, at (202)418-7072. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a *Notice of Proposed Rule Making* until the proceeding has been decided and such decision in the applicable docket is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or any summary of any new information shall be served by the person making the presentation upon the other parties to

the proceeding in the particular docket unless the Commission specifically waives this service requirement. Any comment which has not been served on the Petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief, Audio Division
Media Bureau

APPENDIX

1. Pursuant to authority contained in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM (TV) Table of Allotments, Section 73.202(b) (73.606(b)) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal discussed in the Notice of Proposed Rule Making to which this Appendix is attached. The proponent will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the Petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center (Room CY-A257), at its headquarters, 445 Twelfth Street, SW., Washington, D.C.